



Billing Code 3210-02

U.S. INTERNATIONAL DEVELOPMENT FINANCE CORPORATION

22 CFR Part 708

Sunshine Act Regulations

AGENCY: United States International Development Finance Corporation.

ACTION: Final rule.

SUMMARY: Under the Better Utilization of Investments Leading to Development (BUILD) Act of 2018, the U.S. International Development Finance Corporation (DFC) adopted the regulations of its predecessor, the Overseas Private Investment Corporation (OPIC). One of these regulations implemented the Sunshine Act, which is not applicable to DFC.

Accordingly, to ensure DFC is implementing and complying with applicable regulations, this final rule removes the agency's Sunshine Act regulations.

DATES: This rule is effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Nichole Skoyles, Administrative Counsel, 202-336-8400, fedreg@dfc.gov.

SUPPLEMENTARY INFORMATION: The Better Utilization of Investments Leading to Development (BUILD) Act of 2018, 22 U.S.C. 9601 et seq., created the U.S. International Development Finance Corporation (DFC) by bringing together the Overseas Private Investment Corporation (OPIC) and the Development Credit Authority (DCA) office of the U.S. Agency for International Development (USAID). The BUILD Act specified that completed administrative actions, including rules, would be transferred from OPIC to DFC, *see* 22 U.S.C. 9686(a), and permitted OPIC employees to act in furtherance of that transfer,

see 22 U.S.C. 9682. Accordingly, OPIC’s rules, located in chapter 22 of the Code of Federal Regulations, were transferred to DFC in a rulemaking published at 84 FR 37751 on August 2, 2019. Although OPIC’s administrative actions transferred to DFC, the two agencies have significant differences. To facilitate the transition, DFC’s Office of General Counsel (OGC) is reviewing how these differences impact the agency. As part of this review, OGC determined that the Sunshine Act, 5 U.S.C. 552b (“Sunshine Act” or “Act”), is not applicable to DFC because DFC does not meet the definition of “agency” under the Act. The Sunshine Act applies only to agencies “headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate.” 5 U.S.C. 552b(a)(1). Only four of the nine DFC board members are appointed by the President with the advice and consent of the Senate solely for the purpose of serving on DFC’s Board. *See* 22 U.S.C. 9613(b)(2)(iii). The remaining five board members hold their position by virtue of appointment to a different office and therefore do not count toward the majority required by the Sunshine Act’s definition of “agency.” *See* Whether the Millennium Challenge Corporation Should Be Considered an “Agency” for Purposes of the Open Meeting Requirements of the Sunshine Act, 37 Op. O.L.C. (May 3, 2013). Accordingly, the Sunshine Act is not applicable to DFC. The U.S. Department of Justice Office of Legal Counsel (OLC) concurs with DFC in this determination, which is a consistent interpretation held by OLC since at least 1976, and which the D.C. Circuit adopted in *Symons v. Chrysler Corp. Loan Guarantee Board*, 670 F.2d 238 (D.C. Cir. 1981). DFC’s Board will continue to hold at least two public hearings per year in accordance with 22 U.S.C. 9613(c) and provide public notification for certain projects in accordance with 22 U.S.C. 9671(e)(2).

List of Subjects in 22 CFR Part 708

Sunshine Act.

PART 708—[REMOVED AND RESERVED]

Therefore, under the authority of 22 U.S.C. 9632, remove and reserve 22 CFR part 708, consisting of §§ 708.1 through 708.6.

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United States International Development Finance Corporation.

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